

DEPARTMENT OF STATE REVENUE

01-20210038R.ODR

**Order Denying Refund: 01-20210038R
Individual Income Tax
For the Years 2014, 2015, and 2016**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Order Denying Refund.

HOLDING

Married couple's 2014, 2015, and 2016 refund claims were filed outside of the statutory time period, thus the Department's refund denial was correct.

ISSUE

I. Individual Income Tax - Refund Statute of Limitations.

Authority: IC § 6-8.1-9-1; IC § 6-3-3-10; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dept. of State Revenue v. Horizon Bancorp*, 644 N.E.2d 870 (Ind. 1994).

Taxpayers protest the Department's refund denials.

STATEMENT OF FACTS

Taxpayers are husband and wife Indiana residents. Taxpayers filed their 2014, 2015, and 2016 returns timely, each of which claimed a refund. In 2020, Taxpayers amended these returns based on flow-through enterprise zone employment tax credits earned in 2017, 2018, and 2019, respectively. The amended returns increased the claimed refunds on Taxpayers' 2014, 2015, and 2016 returns. The Indiana Department of Revenue ("Department") denied the additional refunds stating that the claims were made outside the three-year statute of limitations. Taxpayers filed a timely protest, and an administrative hearing was held. This Order Denying Refund results. Additional facts will be provided as necessary.

I. Individual Income Tax - Refund Statute of Limitations.

DISCUSSION

Taxpayers filed their original 2014, 2015, and 2016 Indiana individual income tax returns, each claiming a refund, in a timely manner. In 2020 Taxpayers amended their 2014, 2015, and 2016 returns to include flow-through enterprise zone employment tax credits earned in 2017, 2018, and 2019. The result was an increase in the refunds claimed for 2014, 2015, and 2016. The Department denied those refunds based on the three-year statute of limitations.

Under IC § 6-8.1-9-1(a):

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

Taxpayers' 2014, 2015, and 2016 returns were originally due in April of 2015, 2016, and 2017, respectively. Thus, under IC § 6-8.1-9-1(a), the refund claims (or amended returns) were due by April of 2018, 2019, and 2020, respectively. Because the amended returns were not filed until November of 2020, the Department concluded that the claims were filed outside the three-year statute of limitations.

Indiana law allows enterprise zone employment tax credits to be carried forward and applied in the ten taxable years that succeed the taxable year in which the credit accrues. IC § 6-3-3-10(c). The credit may also be carried back and applied in the three taxable years that *precede* the taxable year in which the credit accrues. *Id.*

Taxpayers argue that the Department's application of the three-year statute of limitations in IC § 6-8.1-9-1(a) impermissibly negates the carryback provision under IC § 6-3-3-10(c). Indiana courts have addressed similar arguments.

This issue was addressed in the Indiana Supreme Court case of *Indiana Dep't of State Revenue v. Horizon Bancorp*, 644 N.E.2d 870 (Ind. 1994). In that case, a national bank was subject to a bank tax as well as an income tax. According to relevant law at the time, the bank was entitled to a credit against its income tax liability in the amount of the bank tax it paid. *Id.* at 872 (citing IC § 6-2.1-4.5-1). If a taxpayer earned a bank tax credit for a particular year, the statute provided that the taxpayer "may claim the excess." *Id.* Taxpayers were limited in terms of which years the credit could be applied. The credit could be applied first to any of the three taxable years immediately preceding a particular taxable year and then to any of the three immediately succeeding years. *Id.* During tax years 1984 to 1989, the bank's bank tax liability exceeded its income tax liability. In 1991 the bank filed a refund claim for those credits. The Department granted the refund claim as it pertained to tax years 1987, 1988, and 1989, but denied the remainder based on the three-year statute of limitations.

The Court held that the statute of limitations does not begin to run until the legal right to bring a claim arises. The credit statute allowed the bank to carryback its bank credits three years or carry them forward three years without a required waiting period. In particular, the applicable statute provided that a taxpayer "may" carry the excess backward or forward and allowed for a refund of the credit if the bank was entitled to such credit; no wait was required before a claim could be filed. *Id.* at 873.. Therefore, the Court held that the bank could have filed a claim for refund with the Department at any time, subject to the limitations of IC § 6-8.1-9-1. "[Bank] had three years from the due date for filing its income tax return for a taxable year to file a refund for excess bank tax paid in that taxable year. Accordingly, the department correctly allowed [bank's] 1991 claim for refund for . . . 1987, 1988, and 1989 and correctly disallowed the claim for prior years." *Id.*

In the instant case, Taxpayers argue that the application of the three-year statute of limitations in IC § 6-8.1-9-1(a) negates the carryback provision under IC § 6-3-3-10(c). Though the enterprise zone employment tax credits were purportedly earned by Taxpayers in 2017, 2018, and 2019, the amended returns were not filed until 2020. Taxpayers claimed enterprise zone employment tax credits in its 2017, 2018, and 2019 returns, thus, Taxpayers had a legal right to these credits as soon as 2017, 2018, and 2019. Like the bank in *Horizon Bancorp*, Taxpayers were aware of and entitled to their enterprise zone employment tax credits when they were earned. Taxpayers could have filed a claim for refund with the Department at any time; there was no need to wait. Thus, in order to qualify for a refund for 2014, 2015, and 2016, the amended returns should have been filed within the three-year statute of limitations. Because Taxpayers filed their refund claims outside of the three years, the Department was correct in denying those claims. Taxpayers' protest is respectfully denied.

FINDING

Taxpayers' protest is denied.

July 12, 2021

Posted: 09/29/2021 by Legislative Services Agency
An [html](#) version of this document.